MORTGAGES—MERGER—DOWER.—On the death of the testator, the court in partition proceedings fixed the widow's dower interest and required the devisee to file a recognizance in a sum sufficient to secure the payment of an annual income equal thereto. The devisee conveyed to the defendant, taking in part payment a mortgage conditioned upon payment of interest on an amount equal to the recognizance to the widow for life, and on her death, the principal sum to the devisee. The defendant conveyed to one C, who later took an assignment of the dower interest. Afterwards, the land was several times conveyed subject to the mortgage which was recited in full. The administrators of C seek to recover unpaid installments of interest on the mortgage. *Held,* the dower interest did not merge and the plaintiffs might recover. *Miller* v. *Griffith* (Pa. 1920) 112 Atl. 52.

Although at law, when a greater and a lesser estate unite in the same person without an intervening interest, there is usually a merger, equity will not follow this rule unless the parties so intend. When no intention is expressed, the rule does not usually apply if merger is inimical to the interest of the owner. *Saint* v. *Cornwall* (1903) 207 Pa. St. 270, 56 Atl. 440; *Carrow* v. *Headly* (1893) 155 Pa. St. 96, 25 Atl. 889. Generally, when the mortgage is assigned to the purchaser of the equity of redemption, the interests are kept separate. *Westheimer* v. *Thompson* (1893) 3 Idaho 560, 32 Pac. 205; *Lovejoy* v. *Vose* (1881) 73 Me. 46; *cf. Browne* v. *Perris* (1890) 56 Hun 601, 11 N. Y. Supp. 97. But if the purchaser of the equity of redemption agrees to pay the mortgage debt as part of the purchase price and afterwards buys the mortgage, it is extinguished. *Brosseau* v. *Lowy* (1904) 209 Ill. 405, 70 N. E. 901. The instant case correctly follows the general rule. The intestate, while owner of the land, by taking an assignment of the dower, received a right to proceed against the land for the money and, if not satisfied, a right of action against the original mortgagor. To hold that the dower interest merged would work a manifest injustice, as it would deprive the purchaser of a part of what he paid for, *i. e.*, a right of action against the defendant. It also appears that C did not intend a merger, as all subsequent conveyances were subject to the mortgage which was recited in full and not restricted to the principal alone.

NEGLIGENCE—LIABILITY WHERE NO PRIVITY OF CONTRACT—DECEIT.—The plaintiffs negotiated with X for the purchase of 905 bags of beans, to be paid for by weight. X employed the defendant, who knew of this transaction, to weigh the bags. The defendant negligently certified to an incorrect weight with the result that the plaintiffs, in reliance upon the certification, overpaid X $1,262.31. In an action for damages, *held,* the plaintiff might recover. *Glanzer* v. *Shepard* (1st Dept. 1921) 194 App. Div. 693, 186 N. Y. Supp. 88.

To the rule that the negligent performance of contract obligations does not ordinarily give rise to claims in favor of third persons, there are exceptions. Liability is imposed on manufacturers of articles inherently dangerous to human life, *Thomas* v. *Winchester* (1852) 6 N. Y. 397, or which become dangerous by reason of a defect. *Johnson* v. *Cadillac Motor Car Co.* (C. C. A. 1919) 261 Fed. 878; *MacPherson* v. *Buick Motor Co.* (1916) 217 N. Y. 382, 111 N. E. 1050; (1916) 16 COLUMBIA LAW REV. 428. The theory is that a legal duty exists apart from contract to anyone into whose hands it is reasonable to expect such articles to come, to use care commensurate with their dangerous character. 1 Shearman & Redfield, *Negligence* (6th ed. 1913) §116 *et seq.;* 2 Cooley, *Torts* (3rd ed. 1906) 1486. Policy has imposed a similar liability on certain occupations of a quasi-public character. *Webbe* v. *Western Union Tel. Co.* (1897) 169 Ill. 610, 48 N. E. 670; Burdick, *Torts* (3rd ed. 1913) 548 *et seq.* However, an attorney retained by the testator is not liable to an intended beneficiary for negligence in drawing a will. *Buckley* v. *Gray* (1895) 110 Cal. 339, 42 Pac. 900; *Savings Bank* v. *Ward* (1879) 100 U. S. 195. Likewise, a contractor who erected a hotel is

not liable to guests injured as a result of negligent construction. *Curtin* v. *Somerset* (1891) 140 Pa. St. 70, 21 Atl. 244. The instant case bears a far closer analogy to these cases which follow the general rule of non-liability than to the recognized exceptions thereto. Moreover, in the absence of misrepresentations, policy does not require such an extension of liability for negligence because the burden imposed would be disproportionate to the culpability. Where negligent misrepresentations suffice for deceit, the plaintiff could recover. *Cabot* v. *Christie* (1869) 42 Vt. 121. But in many jurisdictions, as in New York, knowledge of the falsity of the representations is necessary. *Reno* v. *Bull* (1919) 226 N. Y. 546, 124 N. E. 144. The decision in the instant case completely side-steps *Reno* v. *Bull*. On appeal, the court should frankly overrule that case, rather than emasculate it by laying down a new doctrine of liability unsupported by authority and of questionable policy.

PROCESS—SERVICE ON NON-RESIDENT DEFENDANT CHARGED WITH CRIME.—The defendant, a resident of Virginia, was indicted in the District of Columbia for an extraditable offense. He appeared voluntarily, was tried, and while leaving the court house was served with civil process. He appeared specially to quash service. *Held,* service quashed. *Church* v. *Church* (D. C. Ct. of App. 1921) 49 Wash. Law Rep. 67.

There is absolute agreement among the authorities that a non-resident witness is immune from civil process while in the jurisdiction for the purpose of attending court, on the ground that otherwise the administration of justice would be hampered. *Person* v. *Grier* (1876) 66 N. Y. 124. By the weight of authority, and for the same reason applicable to witnesses, non-resident parties to civil actions are likewise immune. *Diamond* v. *Earle* (1914) 217 Mass. 499, 105 N. E. 363; *contra, Ellis* v. *Degarmo* (1892) 17 R. I. 715, 24 Atl. 579. However, failure to grant a similar immunity to non-resident defendants in criminal prosecutions will not prevent the administration of justice. A non-resident witness cannot be compelled to come into a jurisdiction to testify; and, while in the case of a non-resident party plaintiff the reason for allowing the immunity is not so plain, in the case of a party defendant it does not seem fair that he should be deterred from combating a spurious claim merely because he fears service on other claims. Since one under indictment can be extradicted, however, he is in no sense a voluntary attendant upon the court. While he may delay justice by refusing to come in voluntarily, he cannot defeat it. A failure to limit the rule to the reason therefor has resulted in the weight of authority being in accord with the instant case. *Martin* v. *Bacon* (1905) 76 Ark. 158, 88 S. W. 863; *Murray* v. *Wilcox* (1904) 122 Iowa 188, 97 N. W. 1087. The better rule, however, is contrary. *Netograph Mfg. Co.* v. *Scrugham* (1910) 197 N. Y. 377, 90 N. E. 962.

RESTRICTIVE COVENANTS—CONSTRUCTION—INDEMNITY.—The plaintiff held land under an indenture reciting certain restrictive covenants. Part of this he sold to the defendant, and it seems that subsequently, and prior to the commencement of this action, he conveyed the remaining portion to other persons. In a suit for a restraining and a mandatory injunction relating to buildings erected by the defendant in violation of the covenants, *held,* they were covenants of indemnity and nothing more. The injunction was denied. *Reckitt* v. *Cody* (Ch. D. 1920) 124 L. T. R. 141.

The decision in the principal case is probably the result of a desire to limit what the English courts conceive to be the rule relating to restrictive covenants on land, *i. e.,* that a covenantee is entitled to enforce such a covenant merely because the defendant has agreed not to do a certain thing. See *Collins* v. *Castle*